Kerajaan Malaysia & Ors v Mior Rusli bin Mior Md Jaafar & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(NCvC)(A)-109–02 OF 2024
HASHIM HAMZAH, WONG KIAN KHEONG AND ISMAIL BRAHIM JJCA
4 JUNE 2025

Armed forces — Pensions — Pensions adjustments — High Court allowed respondents' application in seeking declaration that appellants' failure to adjust their pensions constituted breach of Federal Constitution and in seeking similar pension adjustments to those who retired after 1 January 2013 — Whether any pension adjustment had been carried out from 2002 to 2013 by appellants — Whether there was unequal treatment by appellants in respondents' pensions adjustments — Federal Constitution arts 5, 8 & 147 — Regular Forces (Pensions, Gratuities and Other Benefits) Regulations 1982 regs 51 & 54

The respondents ('plaintiffs') were pensionable members of the Malaysian Armed Forces ('MAF') who had retired from service before 1 January 2013 and had been receiving their pensions in accordance with their pensionable status. The appellants ('defendants') were the Government of Malaysia, the Prime Minister of Malaysia, the Senior Minister of Defence, and the Armed Forces Council, respectively. The plaintiffs filed an application to the High Court through an originating summons, claiming the following relief: (a) a declaration that the defendants had breached arts 137 and 8 of the Federal Constitution ('the FC') read together with s 187 of the Armed Forces Act 1972 due to the defendants' respective failures to carry out any pension adjustments for all MAF pensioners who had retired before 1 January 2013; and (b) all MAF pensioners who retired before 1 January 2013 should had their pensions adjusted at a rate and in a manner similar to the adjustments made for MAF pensioners who retired after 1 January 2013. It was the plaintiffs' case that: (i) the last pension adjustment was made in 2002 following the implementation of Sistem Saraan Malaysia; (ii) the defendants failed to carry out any further pension adjustment from 2002 to 2013 concerning all MAF pensioners who retired before 1 January 2013; (iii) the alleged failure by the defendants had created a gap in the amount of pension received by MAF pensioners of the same rank who retired before and after 1 January 2013; and (iv) there was unfairness and unequal treatment of MAF pensioners who retired before 1 January 2013 regarding their pension adjustments, which breached arts 5, 8, and 147 of the FC. The defendants, on the other hand, contended that: (A) pension adjustments were implemented from 2002 to 2012 in accordance with the respective salary revisions mandated by the

Government; (B) from 2012 onwards, there had been no salary revisions implemented by the Government, thus resulting in an absence of any pension adjustment; and (C) there was no unequal treatment of MAF pensioners' pensions by the defendants for those who retired before 1 January 2013 compared to those who retired after 1 January 2013, as alleged by the plaintiffs. The learned judicial commissioner ('JC') decided in favour of the plaintiffs and allowed the plaintiffs' application with no order as to costs. Aggrieved, the defendants filed this appeal. The issues for consideration were: (1) whether any pension adjustment had been carried out from 2002 to 2013 by the defendants; and (2) whether there was unequal treatment by the defendants in the plaintiffs' pensions adjustments.

Held, allowing the appeal:

(1) **(per Hashim Hamzah JCA)** The defendants had presented sufficient evidence to demonstrate that the Government made five salary revisions from 2000 to 2012. As a result of these salary revisions, the defendants had duly adjusted the plaintiffs' pensions. Pension adjustments were made from 2002 to 2012 only when the Government implemented a salary revision that increased the latest salary scale of the members of the Regular Forces. Therefore, the plaintiffs' claim that the gap in the pensions received by the MAF pensioners who retired before and after 1 January 2013 was due to the failure of the defendants to carry out any pension adjustment from 2002 until 2012 was dismissed (see paras 35 & 40–41).

(2) **(per Hashim Hamzah JCA)** The JC had not made any express finding on whether the Garis Panduan Pelaksanaan Pindaan Syarat-Syarat Perkhidmatan Angkatan Tentera Malaysia ('Garis Panduan 2013') and the Surat Pelaksanaan Kesetaraan Pangkat and Penambahbaikan Jadual Gaji Minimum Maksimum (JGMM) Bagi Perkhidmatan Angkatan Tentera Malaysia Di Bawah Sistem Saraan Malaysia ('Surat Pelaksanaan Struktur JGMM') constituted a salary revision, which would trigger the application of reg 54 of the Regular Forces (Pensions, Gratuities and Other Benefits) Regulations 1982 ('the Pensions Regulations 1982'). This finding was essential because if the Garis Panduan 2013 and the Surat Pelaksanaan Struktur JGMM constituted a salary revision, it would affect the current salary scale and the corresponding last drawn salary of the plaintiffs. However, neither document constituted a salary revision but rather an amendment to the terms of service for the serving members of the MAF, effective from 1 January 2013 onwards, regarding their minimum and maximum salary, as well as other ancillary benefits. The members of the MAF who were serving as of 1 January 2013 would continue to receive their existing salaries under the current salary scale, unless they meet the requirements for 'pertukaran pelantikan' and opt to accept the new salary scheme. The difference in the pensions received by

the plaintiffs who retired before and after 1 January 2013 was not a result of salary revision but rather due to the change in the terms of service for the serving MAF members as of 1 January 2013 onwards, which led to their starting pay being adjusted according to their respective qualifications. Given that the Garis Panduan 2013 and the Surat Pelaksanaan Struktur JGMM were not circulars regarding salary revisions and did not abolish the pension adjustment formula set out in reg 54, read together with reg 51 of the Pensions Regulations 1982, the defendants could not be said to have breached arts 147 of the FC, as they had not placed the plaintiffs in a less favourable position. Therefore, the plaintiffs had failed to prove that the defendants breached arts 5, 8, and 147 of the FC on a balance of probabilities. There was merit in the defendants' appeal that the JC had erred in holding so (see paras 49–51, 56, 58, 61 & 64).

(3) **(per Wong Kian Kheong JCA, supporting)** Even if the defendants' failure to adjust pensions for all pensioners of the MAF who had retired before 1 January 2013 existed, it had not breached the equality provision in art 8(1) of the FC. There was a reasonable classification by the defendants to explain the different treatment of the pensioner who had retired before and after 1 January 2013. The 'intelligible differentia' between the two categories of pensioners was due to the application of the Garis Panduan 2013 and the Surat Pelaksanaan Struktur JGMM in which the object of the documents was to 'equalise' and enhance the salary scales of serving MAF members with members of the public services. There existed a nexus between the reasonable classification and the object of the Garis Panduan 2013 and the Surat Pelaksanaan Struktur JGMM. The reasonable classification was certainly not disproportionate to the object of the Garis Panduan 2013 and the Surat Pelaksanaan Struktur JGMM (see para 78).

[Bahasa Malaysia summary

Responden ('plaintif') adalah anggota berpencen Angkatan Tentera Malaysia ('ATM') yang telah bersara daripada perkhidmatan sebelum 1 Januari 2013 dan telah menerima pencen mereka mengikut status berpencen mereka. Perayu-perayu ('defendan') masing-masing adalah Kerajaan Malaysia, Perdana Menteri Malaysia, Menteri Kanan Pertahanan, dan Majlis Angkatan Tentera. Plaintif memfailkan permohonan di Mahkamah Tinggi melalui saman pemula, menuntut relief berikut: (a) pengisytiharan bahawa defendan telah melanggar perkara 137 dan 8 Perlembagaan Persekutuan ('PP') dibaca bersama dengan s 187 Akta Angkatan Tentera 1972 disebabkan kegagalan defendan masing-masing untuk melaksanakan apa-apa pelarasan pencen bagi semua pesara ATM yang telah bersara sebelum 1 Januari 2013; dan (b) semua pesara ATM yang bersara sebelum 1 Januari 2013 hendaklah diselaraskan pada kadar dan mengikut cara yang serupa dengan pelarasan yang dibuat untuk pesara

ATM yang bersara selepas 1 Januari 2013. Kes plaintif adalah bahawa: (i) pelarasan pencen terakhir dibuat pada tahun 2002 berikutan pelaksanaan Sistem Saraan Malaysia; (ii) defendan gagal melaksanakan apa-apa pelarasan pencen selanjutnya dari tahun 2002 hingga 2013 mengenai semua pesara ATM yang bersara sebelum 1 Januari 2013; (iii) dakwaan kegagalan oleh defendan telah mewujudkan jurang dalam jumlah pencen yang diterima oleh pesara ATM dari pangkat yang sama yang bersara sebelum dan selepas 1 Januari 2013; dan (iv) terdapat ketidakadilan dan layanan tidak sama rata terhadap pesara ATM yang bersara sebelum 1 Januari 2013 mengenai pelarasan pencen mereka, yang melanggar perkara 5, 8, dan 147 PP. Defendan, sebaliknya, berhujah bahawa: (A) pelarasan pencen telah dilaksanakan dari tahun 2002 hingga 2012 mengikut semakan gaji masing-masing yang dimandatkan oleh Kerajaan; (B) dari tahun 2012 dan seterusnya, tiada semakan gaji telah dilaksanakan oleh Kerajaan, dengan itu mengakibatkan ketiadaan apa-apa pelarasan pencen; dan (C) tiada layanan tidak sama rata terhadap pencen pesara ATM oleh defendan bagi mereka yang bersara sebelum 1 Januari 2013 berbanding dengan mereka yang bersara selepas 1 Januari 2013, seperti yang didakwa oleh plaintif. Pesuruhjaya kehakiman yang bijaksana ('PK') memutuskan memihak kepada plaintif dan membenarkan permohonan plaintif tanpa perintah mengenai kos. Tidak berpuas hati, defendan memfailkan rayuan ini. Isu-isu yang perlu dipertimbangkan ialah: (1) sama ada apa-apa pelarasan pencen telah dilaksanakan dari tahun 2002 hingga 2013 oleh defendan; dan (2) sama ada terdapat layanan tidak sama rata oleh defendan dalam pelarasan pencen plaintif.

Diputuskan, membenarkan rayuan:

(1) **(oleh Hashim Hamzah HMR)** Defendan telah mengemukakan bukti yang mencukupi untuk menunjukkan bahawa Kerajaan telah membuat lima semakan gaji dari tahun 2000 hingga 2012. Akibat daripada semakan gaji ini, defendan telah sewajarnya melaraskan pencen plaintif. Pelarasan pencen telah dibuat dari tahun 2002 hingga 2012 hanya apabila Kerajaan melaksanakan semakan gaji yang meningkatkan skala gaji terkini anggota Angkatan Tetap. Oleh itu, tuntutan plaintif bahawa jurang dalam pencen yang diterima oleh pesara ATM yang bersara sebelum dan selepas 1 Januari 2013 adalah disebabkan oleh kegagalan defendan untuk melaksanakan sebarang pelarasan pencen dari tahun 2002 hingga 2012 telah ditolak (lihat perenggan 35 & 40–41).

(2) **(oleh Hashim Hamzah HMR)** PK tidak membuat sebarang penemuan jelas sama ada Garis Panduan Pelaksanaan Pindaan Syarat-Syarat Perkhidmatan Angkatan Tentera Malaysia ('Garis Panduan 2013') dan Surat Pelaksanaan Kesetaraan Pangkat dan Penambahbaikan Jadual Gaji Minimum Maksimum (JGMM) Bagi Perkhidmatan Angkatan Tentera Malaysia Di Bawah Sistem Saraan Malaysia ('Surat Pelaksanaan Struktur JGMM') merupakan semakan gaji, yang akan mencetuskan pemakaian

peraturan 54 Peraturan-Peraturan Angkatan Tetap (Pencen, Ganjaran dan Faedah-Faedah Lain) 1982 ('Peraturan Pencen 1982'). Penemuan ini adalah penting kerana jika Garis Panduan 2013 dan Surat Pelaksanaan Struktur JGMM merupakan semakan gaji, ia akan mempengaruhi skala gaji semasa dan gaji terakhir yang diterima oleh plaintif. Walau bagaimanapun, kedua-dua dokumen tersebut bukanlah semakan gaji tetapi lebih kepada pindaan kepada syarat perkhidmatan untuk anggota ATM yang sedang berkhidmat, berkuat kuasa dari 1 Januari 2013 dan seterusnya, mengenai gaji minimum dan maksimum mereka, serta faedah sampingan lain. Anggota ATM yang berkhidmat pada 1 Januari 2013 akan terus menerima gaji sedia ada mereka di bawah skala gaji semasa, melainkan mereka memenuhi syarat untuk 'pertukaran pelantikan' dan memilih untuk menerima skim gaji baharu. Perbezaan dalam pencen yang diterima oleh plaintif yang bersara sebelum dan selepas 1 Januari 2013 bukanlah akibat daripada semakan gaji tetapi lebih kepada perubahan dalam syarat perkhidmatan untuk anggota ATM yang berkhidmat mulai 1 Januari 2013 dan seterusnya, yang membawa kepada gaji permulaan mereka diselaraskan mengikut kelayakan masing-masing. Memandangkan Garis Panduan 2013 dan Surat Pelaksanaan Struktur JGMM bukanlah surat pekeliling mengenai semakan gaji dan tidak memansuhkan formula pelarasan pencen yang ditetapkan dalam peraturan 54, yang dibaca bersama dengan peraturan 51 Peraturan Pencen 1982, defendan tidak boleh dikatakan telah melanggar perkara 147 PP, kerana mereka tidak meletakkan plaintif dalam kedudukan yang kurang baik. Oleh itu, plaintif telah gagal membuktikan bahawa defendan melanggar perkara 5, 8, dan 147 PP atas imbangan kebarangkalian. Terdapat merit dalam rayuan defendan bahawa PK telah terkhilaf dalam memutuskan sedemikian (lihat perenggan 49–51, 56, 58, 61 & 64).

(3) **(oleh Wong Kian Kheong HMR, menyokong)** Sekalipun kegagalan defendan untuk melaraskan pencen bagi semua pesara ATM yang telah bersara sebelum 1 Januari 2013 wujud, ia tidak melanggar peruntukan kesamarataan dalam perkara 8(1) PP. Terdapat pengelasan munasabah oleh defendan untuk menjelaskan layanan yang berbeza terhadap pesara yang telah bersara sebelum dan selepas 1 Januari 2013. 'Intelligible differentia' antara dua kategori pesara itu adalah disebabkan oleh pemakaian Garis Panduan 2013 dan Surat Pelaksanaan Struktur JGMM di mana objektif dokumen tersebut adalah untuk menyetarakan dan menambah baik skala gaji anggota ATM yang berkhidmat dengan anggota perkhidmatan awam. Terdapat perkaitan antara pengelasan munasabah dan objektif Garis Panduan 2013 dan Surat Pelaksanaan Struktur JGMM. Pengelasan munasabah itu sememangnya seimbang dengan objektif Garis Panduan 2013 dan Surat Pelaksanaan Struktur JGMM (lihat perenggan 78).]

Cases referred to

Dream Property Sdn Bhd v Atlas Housing Sdn Bhd [2015] 2 MLJ 441; [2015] 2 CLJ 453; [2015] 2 AMR 601, FC (refd)

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309; [2004] 6 AMR 781, FC (refd)

The Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public service) [2023] 5 MLJ 32; [2023] 8 CLJ 1, FC (distd)

Mohd Azizul bin Abd Wahab v Tan Sri Dato' Seri Abdul Hamid bin Bador (IG) (Pengerusi Lembaga Tatatertib Polis DiRaja Malaysia, Bukit Aman) & Ors [2025] 4 MLJ 226, CA (refd)

Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67; [2020] 10 CLJ 1, FC (refd)

UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor [2018] supp MLJ 363; [2010] 9 CLJ 785; [2011] 1 AMCR 338, FC (refd)

Legislation referred to

Armed Forces Act 1972 ss 187, 187(1), 217

Federal Constitution arts 5, 8, 8(1), 132(1)(a), 137, 137(1), (2), 147

Pensions Adjustment Act 1980 ss 3, 6

Pensions Regulations 1982 regs 2, 22(1)(a), 24(1)(a), 50(1), (2), 51, 53, 54, Parts II, V

Regular Forces (Pensions, Gratuities and Other Benefits) Regulations 1982

Appeal from: *Mior Rosli bin Mior Md Jaafar dan lain-lain lwn Kerajaan Malaysia dan lain-lain* [2024] MLJU 867 (High Court, Kuala Lumpur)

Ahmad Hanir bin Hambaly @ Arwi (with Kogilambigai Muthusamy) (Attorney Generals' Chambers) for the appellant.

Mohamed Haniff Khatri Abdullah (with Nurul Huda Razali) (Haniff Khatri) for the respondent.

Hashim Hamzah JCA:

INTRODUCTION

[1] For ease of reference, the parties in this appeal will be referred to as they were in the High Court below.

[2] In the present case, the plaintiffs are pensionable members of the Malaysian Armed Forces ('MAF') who had retired from service before 1 January 2013 and have been receiving their pensions in accordance with their pensionable status. The defendants are the Government of Malaysia, the Prime

Minister of Malaysia, the Senior Minister of Defence, and the Armed Forces Council, respectively.

[3] On 17 November 2022, the plaintiffs filed an application to the High Court through an originating summons, claiming the following relief:

(a) a declaration that all the defendants had breached arts 137 and 8 of the Federal Constitution ('the FC') read together with s 187 of the Armed Forces Act 1972 (Act 77) due to the defendants' respective failures to carry out any pension adjustments for all MAF pensioners who had retired before 1 January 2013; and

(b) all MAF pensioners who retired before 1 January 2013 should have their pensions adjusted at a rate and in a manner similar to the adjustments made for MAF pensioners who retired after 1 January 2013.

[4] After hearing both parties, the learned judicial commissioner ('JC') decided in favour of the plaintiffs and allowed the plaintiffs' application with no order as to costs. Aggrieved by the said decision, the defendants filed this appeal to the Court of Appeal.

THE PLAINTIFFS' CASE

[5] In summary, it is the plaintiffs' case that:

(a) the last pension adjustment was made in 2002 following the implementation of Sistem Saraan Malaysia ('SSM');

(b) the defendants failed to carry out any further pension adjustment from 2002 to 2013 concerning all MAF pensioners who retired before 1 January 2013;

(c) the alleged failure by the defendants has created a gap in the amount of pension received by MAF pensioners of the same rank who retired before and after 1 January 2013; and

(d) there was unfairness and unequal treatment of MAF pensioners who retired before 1 January 2013 regarding their pension adjustments, which breached arts 5, 8 and 147 of the FC.

THE DEFENDANTS' CASE

[6] The defendants, on the other hand, contended that:

(a) pension adjustments were implemented from 2002 to 2012 in accordance with the respective salary revisions mandated by the Government;

(b) from 2012 onwards, there have been no salary revisions implemented by the Government, thus resulting in an absence of any pension adjustment; and

(c) there was no unequal treatment of MAF pensioners' pensions by the defendants for those who retired before 1 January 2013 compared to those who retired after 1 January 2013, as alleged by the plaintiffs.

The law on appellate intervention

[7] The law is established that an appellate court should not intervene in the trial court's findings on primary facts unless it is satisfied that the trial judge was plainly wrong, ie, the 'plainly wrong test'. An appellate court is entitled to examine the trial court's evaluation process of evidence. It may overturn any decision of the trial court that lacks proper judicial appreciation of the evidence or is based on errors of law.

[8] See *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309; [2004] 6 AMR 781; *UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2018] supp MLJ 363; [2010] 9 CLJ 785; [2011] 1 AMCR 338; *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2015] 2 MLJ 441; [2015] 2 CLJ 453; [2015] 2 AMR 601; and *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67; [2020] 10 CLJ 1.

[9] With this fundamental legal principle in mind, we turn to examine the issues raised by both parties in this appeal.

OUR ANALYSIS AND FINDINGS

The relevant laws

[10] Before addressing the issues raised by the parties involved in this appeal, we consider it essential to outline the relevant laws pertaining to this case.

[11] First and foremost, art 147 of the FC safeguards the pension rights of any member of the public service, as well as those of their widow, children, dependents, or personal representatives, as can be seen below:

> Article 147 Protection of pension rights.
>
> (1) *The law applicable to any pension, gratuity or other like allowance* (in this Article referred to as an 'award') *granted to a member of any of the public services*, or to his widow, children, dependant or personal representatives, *shall be that in force on the relevant day or any later law not less favourable* to the person to whom the award is made.

(2) For the purposes of this Article the relevant day is —

(a) in relation to an award made before Merdeka Day, the date on which the award was made;

(b) in relation to an award made after Merdeka Day to or in respect of any person who was a member of any of the public services before Merdeka Day, the thirtieth day of August, nineteen hundred and fifty-seven;

(c) in relation to an award made to or in respect of any person who first became a member of any of the public services on or after Merdeka Day, the date on which he first became such a member.

(3) For the purposes of this Article, where the law applicable to an award depends on the option of the person to whom it is made, *the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted*. (Emphasis added.)

[12] Article 132(1)(a) of the FC identifies the armed forces as one of the public services. The relevant provision reads:

Article 132 *Public services*

(1) For the purposes of this Constitution, the public services are —

(a) *the armed forces*; ... (Emphasis added.)

[13] Pursuant to art 137(1) of the FC, the Armed Forces Council ('AFC') was established. The AFC is responsible, under the general authority of the Yang di-Pertuan Agong ('YDPA'), for the command, discipline, and administration of MAF, excluding matters related to their operational use. The relevant provision reads:

Article 137 Armed Forces Council.

(1) There shall be an *Armed Forces Council*, which *shall be responsible under the general authority of the Yang di-Pertuan Agong* for the *command, discipline and administration of, and all other matters relating to, the armed forces*, other than matters relating to their operational use. (Emphasis added.)

[14] Article 137(2) of the FC stipulates that the AFC's exercise of any of its functions under art 137(1) of the FC is subject to the provisions of any federal law. The relevant provision reads:

(2) Clause (1) *has effect subject to the provisions of any federal law, and any such law may provide for the vesting in the Armed Forces Council of any functions with respect to the armed forces.* (Emphasis added.)

[15] Pursuant thereto, the Armed Forces Act 1972 (Act 77) was enacted to amend and consolidate the law relating to the establishment, government and discipline of the armed forces of Malaysia, In particular, the preamble to Act 77

states that:

> Preamble
>
> *An Act to amend and consolidate the law relating to the establishment, government and discipline of the armed forces of Malaysia.* (Emphasis added.)

[16] Pursuant to the enforcement of Act 77 on 1 June 1976 (through PU(B) 271/1976), the then existing enactments and ordinances pertaining to the armed forces were repealed. Section 217 of Act 77 states that:

> Section 217 Repeal of existing enactment and ordinances
>
> (1) The Malay Regiment Enactment, the Federation Regiment Ordinance 1952 [Ord 27 of 1952], the Military Forces Ordinance 1952 [Ord 47 of 1952], the Navy Ordinance 1958, the Air Force Ordinance 1958, the Territorial Army Ordinance 1958 [Ord 52 of 1958], the Naval Volunteer Reserve Ordinance 1958 [Ord 55 of 1958] and the Air Force Volunteer Reserve Ordinance 1958 [Ord 58 of 1958], *are hereby repealed*:
>
> Provided that —
>
> (a) all the armed forces raised under the provisions of the aforesaid enactment and ordinances shall be deemed to be raised under this Act; and
>
> (b) all officers and servicemen serving with the armed forces raised under the provisions of the aforesaid enactment and ordinances on the appointed day shall be deemed to have been commissioned, appointed, enlisted or re-engaged, as the case may be, under this Act, but such officers and servicemen shall not be required to serve with the regular forces for a longer period than that for which they were required to serve at the time of their original commissioning, appointment, enlistment or re-engagement, as the case may be.
>
> (2) Notwithstanding the provisions of the last foregoing subsection or the provisions of any written law to the contrary, all rules, regulations, orders and other instruments made under the enactment and ordinances hereby repealed, in so far as they are not inconsistent with the provisions of this Act, shall remain in force until specifically repealed. (Emphasis added.)

[17] For the purpose of this appeal, s 187(1) of Act 77 gives the power to the AFC, with the approval of the YDPA, to make regulations in respect of the eligibility of members of the regular forces and their dependents for retired pay, pensions, gratuities and other grants, including any conditions or provisions necessary to carry out the purpose of the said section. The relevant provision reads:

> Section 187 Power of the Armed Forces Council to make pension, etc., regulations
>
> (1) *The Armed Forces Council with the approval of the Yang di-Pertuan Agong may make regulations* including regulations providing for matters which may be issued by Perintah Majlis Angkatan Tentera *in respect of the eligibility of members of the regular forces and their dependants for retired pay, pensions, gratuities and other grants; and such*

regulations may specify the conditions governing the grant of and the rates of such retired pay, pensions, gratuities and other grants, *and may contain any other provisions which may be necessary to carry out the purposes of this section.* (Emphasis added.)

[18] In the exercise of its powers conferred by s 187 of Act 77, the AFC, with the approval of the YDPA, made the Regular Forces (Pensions, Gratuities and Other Benefits) Regulations 1982 (PU(A)123/1982) ('the Pensions Regulations 1982') which came into force on 1 July 1976.

[19] Part II of the Pensions Regulations 1982 provides for the computation of service pensions and gratuities. For the purpose of this appeal, we believe it is sufficient for us to reproduce the general computation of pensions for members of the Regular Forces in the Pensions Regulations 1982 (which is not disputed by all the parties in this appeal).

[20] According to the Pensions Regulations 1982, the members of the Regular Forces are the regular commissioned officers and servicemen of the Malaysian Army, the Royal Malaysian Navy and the Royal Malaysian Air Force (see reg 2 of the Pensions Regulations 1982).

[21] Regulation 22(1)(a) of the Pension Regulations 1982 outlines the computation of pension for a regular commissioned officer as follows:

22(1)(a) A service pension *in respect of a regular commissioned officer* is to be computed based on the following formula —

1/600 x total of completed months of reckonable service x last drawn salary subject to the maximum of half of his last drawn salary. (Emphasis added.)

[22] Regulation 24(1)(a) of the Pensions Regulations 1982, on the other hand, provides for the computation of pension for a serviceman in the following manner:

24 (1)(a) A service pension *in respect of a serviceman* is to be computed based on the following formula:

1/504 x total completed months of reckonable service x last drawn salary subject to the maximum of half his last drawn salary. (Emphasis added.)

[23] The term 'reckonable service' is defined under reg 2 to mean service prescribed as reckonable service under the Pensions Regulations 1982.

[24] Under the same regulation, the term 'last drawn salary' is defined to mean the actual last drawn monthly substantive salary of a member appropriate to his substantive rank. In the case of a serviceman being appointed with the approval of the AFC to serve in any organisation, the last drawn salary is the

actual last drawn monthly salary paid to the member by the organisation whilst on the same terms and conditions as the scheme of service.

[25] Notably, Part V of the Pensions Regulations 1982, which consists of regs 50–62, outlines the mechanism for the adjustment of pensions, gratuities and other benefits applicable to the category of persons mentioned in reg 50(1) and (2) of the Pensions Regulations 1982 as follows:

> 50 Application of adjustment provisions
>
> (1) *This part shall apply* in respect of —
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> (a) *members who have retired from the Regular Forces and are receiving pension or other benefit under any written law*;
>
> (b) dependants of members who died in service or after the date of retirement, who are receiving pension or other benefit under any written law;
>
> (c) the dependants of members who died in retirement, who are not receiving any pension or other benefit under any written law, provided the members themselves were in receipt of service pension or retired pay under any written law;
>
> (d) dependants of members who died in service who are not receiving any pension or other benefit under any written law, provided on the date of death of the member he would have qualified to receive a pension or retired pay under any written law had he retired on medical grounds;
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> (e) dependants of short service commissioned officers who died in service between the first August 1968 and the 30th June 1980 and are not receiving any pension or other benefit provided that on the date of death, the officer had at least ten years reckonable service;
>
> (f) members of the volunteer forces who were mobilised or their dependants who are in receipt of a disability pension or dependant's pension under the law normally applicable to members of the Regular Forces.
>
> (2) For the purpose of paragraph (1) *the members or the dependants must be resident in Malaysia.* (Emphasis added.)

[26] Regulation 54 of the Pensions Regulations 1982 explicitly provides the formula for adjusting service pensions payable to the pensioners as follows:

TYPE OF BENEFIT	FORMULA
(a) Service pensions to a regular commissioned officer.	1/600 x number of months of reckonable service (subject to not more than 300 months) x corresponding last drawn salary.

(b) Short service pension to a short service commissioned officer.	3/4 x 1/600 x number of months of reckonable service (subject to not more than 300 months) x corresponding last drawn salary.
(c) Service pension to a serviceman.	1/504 x number of months of reckonable service (subject to not more than 252 months) x corresponding last drawn salary.
(d) Service pension for retirement on medical grounds to a regular commissioned officer.	Same as in (a) above.
(e) Service pension for retirement on medical grounds to a short-service commissioned officer.	Same as in (b) above.
(f) Service pension for retirement on medical grounds for a serviceman.	Same as in (c) above.
(g) Derivative pension to the dependent of a regular commissioned officer.	1/600 x number of months of reckonable service (subject to not more than 300 months) x corresponding last drawn salary, but subject to a minimum of not less than 1/5 of the officer's corresponding last drawn salary.
(h) Derivative pension to the dependent of a short-service commissioned officer.	3/4 x 1/600 x number of reckonable service (subject to not more than 300 months) x corresponding last drawn salary, but subject to a minimum of not less than 3/4 of the 1/5 of the officer's corresponding last drawn salary.
(i) Derivative pension to the dependent of a serviceman.	1/504 x number of months of reckonable service (subject to not more than 252 months) x corresponding last drawn salary, but subject to a minimum of not less than 1/5 of the serviceman's corresponding last drawn salary.

[27] We noticed that the common factors in the formula for pension adjustments above, regardless of ranks, are the 'reckonable service' and 'corresponding last drawn salary'.

[28] Regulation 51 of the Pensions Regulations 1982 defined those terms as

follows:

> 51 In this part, unless the context otherwise requires —
>
> 'corresponding last drawn salary' means *the salary that the member would have drawn had he retired or died under the current salary scale*;
>
> 'current salary scale' means the *latest salary scale* which is *applicable to the Regular Forces as a result of any salary revision* made by the government;
>
> 'reckonable service' means *any service of a member which has been used in the computation of the pension* or other benefit of the member *on his retirement* or of his dependent upon his death or any service which constitutes reckonable service under the written law applicable at the time of retirement or death of the member. (Emphasis added.)

[29] Regulation 53 of the Pensions Regulations 1982 must also be read together with the provision above, as it states that the AFC is responsible for determining a member's last drawn salary based on the advice of the Director General of Public Services ('DGPS').

[30] In a nutshell, the service pensions receivable by the MAF pensioners would only be adjusted when there is a change in the latest salary scale applicable to the Regular Forces as a result of any salary revision made by the Government, and upon determination of the corresponding last drawn salary by the AFC on the advice of the DGPS.

[31] Having addressed this, we will now proceed to examine the issues presented by both parties in this appeal.

First issue: Whether any pension adjustment had been carried out from 2002 to 2013 by the defendants

[32] In this case, the core of the plaintiffs' case is that the difference in pensions for MAF pensioners who retired before and after 1 January 2013 resulted from the defendants' failure to implement pension adjustments from 2002 until 2013.

[33] This can be seen from the plaintiffs' affidavit in support, affirmed by the first plaintiff on 17 November 2022, as follows:

> 4. Selanjutnya, Plaintif-Plaintif yang lain juga merupakan pesara-pesara daripada Angkatan Tentera Malaysia yang mana *pencen mereka ditinggalkan dan/atau dlnafikan semenjak penyelarasan melalui Sistem Saraan Malaysia 2002 ('SSM 2002') sehinggalah 2013.* Oleh itu, kami mempunyai kepentingan yang sama dan kedudukan dan/atau kepentingan dalam prosiding ini ...
>
> ... 12. Oleh yang demikian, walaupun terdapat formula pengiraan tersendiri di bawah Peraturan-Peraturan Angkatan Tetap (Pencen, Ganjaran dan Faedah-Faedah

lain) 1982 tersebut, *terdapat jurang yang ketara yang terhasil dalam jumlah pencen yang diterima oleh Pesara-Pesara ATM tersebut disebabkan pencen yang tidak diselaraskan dari tahun 2002 sehingga tahun 2013*.

Pesara-Pesara ATM tersebut terpaksa hidup dengan pencen yang tidak mencukupi untuk menyara hidup ...

... 16. Oleh yang demikian, saya dengan hormatnya menyatakan bahawa MAT hendaklah melakukan pindaan terhadap Peraturan-Peraturan Angkatan Tetap (Pencen, Ganjaran dan Faedah-Faedah Lain) 1982 dengan memasukkan peruntukan baharu berkenaan dengan penyelarasan pencen bagi pesara-pesara ATM, *terutamanya bagi Pesara-Pesara ATM tersebut yang tertinggal dan/atau dinafikan bagi penyelarasan pencen semenjak tahun 2002 hingga 2013.*

17. Saya percaya bahawa *Defendan-Defendan bertanggungjawab untuk menyelesaikan pembayaran kepada setiap Pesara-Pesara ATM tersebut keseluruhan jumlah pencen yang tertinggal dan/atau dinafikan bagi penyelarasan pencen sejak tahun 2002 hingga 2013 tersebut.* (Emphasis added.)

[34] In reply, the defendants in their affidavit in reply (1) affirmed by Puan Syarina bt Kassim, the then Deputy Director General of the Veteran Affairs Department, Ministry of Defence Malaysia on 20 March 2023 and their affidavit in reply (2) affirmed by Datuk Dr Shahrazat bt Hj Ahmad, the then Deputy Secretary General (Development) of the Ministry of Defence on 2 August 2023, had extensively demonstrated that the plaintiffs' pensions have been adjusted in according with the relevant laws and circulars.

[35] We found that the defendants had presented sufficient evidence to demonstrate that the Government made five salary revisions from 2000 to 2012. As a result of these salary revisions, the defendants had duly adjusted the plaintiffs' pensions.

[36] Take the first plaintiff, for instance. It was undisputed by the plaintiffs that:

(a) the first plaintiff's pension upon his optional retirement, which came into effect on 1 May 1995, was *RM1,083.90* based on the formula provided under reg 22(1)(a) of the Pensions Regulations 1982 (1/600 x 251 months x RM2,591 = RM1,083.90 per month); and

(b) the first plaintiff received a pension of RM1,083.90 monthly from May 1995 until December 1999, as the Government made no salary revisions during this period.

[37] The respective salary revisions and the pension adjustment for the first plaintiff can be seen in the table below:

CIRCULARS BY THE GOVERNMENT ON THE SALARY REVISIONS	
First Salary Revision (effective on 1 January 2000)	Pekeliling Perkhidmatan Bilangan 8 Tahun 2000 — Pelarasan Gaji 10% Kepada Anggota Perkhidmatan Awam Persekutuan Di Bawah Sistem Saraan Baru (SSB) dated 15 May 2000.
	Dokumen Pelaksanaan — Pelarasan Gaji 10% Kepada Anggota Perkhidmatan Angkatan Tentera Malaysia (ATM) Di Bawah SSB dated 15 May 2000, which resulted in the modification of the salary scale following an increment of 10% of the salary.
	Adopted by way of AFC's Meeting No 391 on 9 November 2000.
	Perintah Majlis Angkatan Tentera Bilangan 7 Tahun 2000 dated 29 December 2000.
	For the purpose of pension adjustment, the first plaintiff's 'corresponding last drawn salary' after a 10% salary adjustment is RM2,850.10 per month. The pension that the first plaintiff would be entitled to from 1 January 2000 is RM1,192.29 per month (1/600 x 251 months x RM2,850.10 = RM1,192.29 per month).
Second Salary Revision (effective 1 January 2002)	Pekeliling Perkhidmatan Bilangan 12 Tahun 2001 — Pelarasan Gaji 10% Kepada Anggota Perkhidmatan Awam Persekutuan Di Bawah SSB.
	Dokumen Pelaksanaan 'Pelarasan Gaji 10% Kepada Anggota Perkhidmatan ATM Di Bawah SSB' dated 27 December 2001, which resulted in the modification of the salary scale following an increment of 10% of the salary.
	Adopted by way of AFC's Meeting No 402 held on 22 January 2002.
	Perintah Majlis Angkatan Tentera Bilangan 12 Tahun 2002 — 'Pindaan Pertama Kepada Semakan Gaji, Elaun dan Kemudahan bagi ATM di bawah SSB' dated 28 August 2002'.
	For the purpose of pension adjustment, the first plaintiff's 'corresponding last drawn salary' after a 10% salary adjustment is RM3,135.11 per month. The pension that the first plaintiff would be entitled to from 1 January 2002 is RM1,311.51 per month (1/600 x 251 months x RM3,135.11 = RM1,311.51 per month).

Third Salary Revision (effective from 1 November 2002)	Pekeliling Perkhidmatan Bilangan 4 Tahun 2002 — Pelaksanaan Sistem Saraaan Malaysia (SSM) Bagi Anggota Perkhidmatan Awam Persekutuan dates 20 august 2002, which resulted in the modification of the salary and allowance structure.
	Surat Pelaksanaan SSM Bagi Perkhidmatan Awam Tentera Malaysia dated 20 August 2002, whereby the modification of the salary and allowance structure for the Regular Forces is as follows: (a) RM110 for Major General and above; (b) RM65 for Captain to Brigadier General; and (c) RM15 for Private to Lieutenant
	Adopted by way of Armed Forces Council's Meeting No 410 on 24 September 2002, Armed Forces Council Meeting No 411 dated 30 October 2002 and Armed Forces Council Meeting No 412 on 19 November 2002.
	Perintah Majlis Angkatan Tentera Bilangan 23 Tahun 2002 — Pelaksanaan SSM Bagi Perkhidmatan ATM dated 20 January 2003.
	For the purpose of pension adjustment, the fitst plaintiff's 'corresponding last drawn salary' after a RM65 salary adjustment is RM3,200.11 per month. The pension that the first plaintiff would be entitled to from 1 November 2002 is RM1,338.71 per month (1/600 x 251 months x RM3,200.11 = RM1,338. 71 per month).
Fourth Salary Revision (effective from 1 July 2007)	Pekeliling Perkhidmatan Bilangan 7 Tahun 2007 — 'Pemberian Kenaikan Gaji Kepada Pegawai Perkhidmatan Awam Persekutuan Di Bawah SSM' dated 15 June 2007.
	Surat Pelaksanaan Pemberian Kenaikan Gaji Kepada Perkhidmatan ATM Di Bawah SSM dated 15 June 2007, whereby there was a modification to the salary scale resulting in an increment in salary of 7.5% to 30%.
	Adopted by way of AFC's Meeting No 460 on 26 June 2007.
	For the purpose of pension adjustment, the first plaintiff's 'corresponding last drawn salary' after a 18% salary adjustment is RM3,776.08 per month.

	The pension that the first plaintifff would be entitled to from 1 July 2007 is RM1,579.66 per month (1/600 x 251 months x RM3,776.08 = RM1,579.66 per month).
Fifth Salary Revision (effective from 1 January 2012)	Pekeliling Perkhidmatan Bilangan 1 Tahun 2012 — Kenaikan Gaji Pegawai Perkhidmatan Awam Persekutuan Di Bawah SSM dated 30 March 2012.
	Surat Kenaikan Gaji Bagi Perkhidmatan ATM di Bawah SSM dated 30 March 2012, whereby there was a modification to the salary scale resulting in an increment in salary of 7% to 9%.
	Adopted by way of Armed Forces Council's Meeting No 513 on 26 March 2012.
	For the purpose of pension adjustment, the first plaintiff's 'corresponding last drawn salary' after a 13% salary adjustment is RM4,266.97 per month.
	The pension that the first plaintiff would be entitled to from 1 January 2012 is RM1,785.01 per month (1/600 x 251 months x RM4,263.96 = RM1,785.01/month).

[38] Following the abovementioned pension adjustments, all of which were done in accordance with the relevant laws and regulations, the first plaintiff's pension increased from RM1,083.90 per month to RM1,785.01 per month, reflecting an increment of RM701.11. It is also undisputed that the first plaintiff's monthly pension is duly paid to him, including all arrears.

[39] We found that pension adjustments have also been carried out in respect of the pensions received by the second to the 50th plaintiffs as demonstrated in the 'Jadual Penyelarasan Pencen Bagi Plaintif Ke-2 hingga Plaintif Ke-50' as can be seen in 'exh SHA10' annexed in the defendants' affidavit-in-reply (2).

[40] Based on the above, we agree with the defendants that pension adjustments were made from 2002 to 2012 only when the Government implemented a salary revision that increased the latest salary scale of the members of the Regular Forces.

[41] Therefore, we dismiss the plaintiffs' claim that the gap in the pensions received by the MAF pensioners who retired before and after 1 January 2013 was due to the failure of the defendants to carry out any pension adjustment from 2002 until 2012.

Second issue: Whether there was unequal treatment by the defendants in the plaintiffs' pensions adjustments

[42] However, in 2013, the Government issued a 'Garis Panduan Pelaksanaan Pindaan Syarat-Syarat Perkhidmatan Angkatan Tentera Malaysia' dated 17 January 2013 ('Garis Panduan 2013') that was approved and adopted by the AFC during the 522nd AFC Meeting, and a 'Surat Pelaksanaan Kesetaraan Pangkat and Penambahbaikan Jadual Gaji Minimum Maksimum (JGMM) Bagi Perkhidmatan Angkatan Tentera Malaysia Di Bawah Sistem Saraan Malaysia' dated 14 March 2013 ('Surat Pelaksanaan Struktur JGMM') that was approved and adopted by the AFC in its 525th AFC Meeting.

[43] In para 11 of the 'Surat Pelaksanaan Struktur JGMM', it is clear that the provisions of the 'Surat Pelaksanaan Struktur JGMM' do not apply, among others, to members of the MAF or the Regular Forces who retired from service on or before 1 January 2013. The relevant provision reads:

> *Anggota Yang Tidak Layak*
>
> 11. Penambahbaikan struktur JGMM ini tidak melibatkan:
>
> 11.1 anggota yang dikenakan hukuman tatatertib buang kerja yang berkuat kuasa pada atau sebelum 1 Januari 2013.
>
> 11.2 *anggota yang bersara pada atau sebelum 1 Januari 2013.* (Emphasis added.)

[44] The learned JC in the present case found that the difference in the pensions received by MAF pensioners who retired before and after 1 January 2013 was due to the implementation of the 'Garis Panduan 2013' and the 'Surat Pelaksanaan Struktur JGMM', which excluded the plaintiffs.

[45] According to the learned JC, with the implementation of the 'Garis Panduan 2013' and the 'Surat Pelaksanaan Struktur JGMM' starting from 1 January 2013, MAF pensioners who retired before this date, no longer receive pensions calculated based on their 'corresponding last drawn salary' as stipulated in reg 54 of the Pensions Regulations 1982.

[46] This approach was deemed less favourable by the learned JC and therefore, held to be unenforceable, inapplicable, and void. The learned JC supported this decision with reference to the Federal Court's decision in *The Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public service)* [2023] 5 MLJ 32; [2023] 8 CLJ 1.

[47] Therefore, the learned JC concluded that the defendants had acted in breach of arts 5, 8 and 147 of the FC.

[48] We disagree with the learned JC for the following reasons.

[49] At the outset, we agree with the defendants that the learned JC had not made any express finding on whether the 'Garis Panduan 2013' and the 'Surat Pelaksanaan Struktur JGMM' constituted a salary revision, which would trigger the application of reg 54 of the Pensions Regulations 1982.

[50] We are of the view that, this finding is essential because if the 'Garis Panduan 2013' and the 'Surat Pelaksanaan Struktur JGMM' constituted a salary revision, it would affect the current salary scale and the corresponding last drawn salary of the plaintiffs.

[51] After a thorough reading of the 'Garis Panduan 2013' and the 'Surat Pelaksanaan Struktur JGMM', we agree with the defendants that neither document constitutes a salary revision but rather an amendment to the terms of service for the serving members of the MAF, effective from 1 January 2013 onwards, regarding their minimum and maximum salary, as well as other ancillary benefits. The aim was to equalise the grading system of MAF members with that of the General Public Service.

[52] We refer to paras 1 and 2 of the 'Garis Panduan 2013', which stipulates that:

> TUJUAN
>
> 1. Garis panduan in bertujuan untuk memaklum dan melaksanakan Keputusan Kerajaan mengenai *pindaan syarat-syarat perkhidmatan* Pegawai Angkatan Tetap dan Askar iaskar Angkatan Tetap Angkatan Tentera Malaysia (ATM) sedia ada yang berkuat kuasa sejak 1 Oktober 2004.
>
> LATAR BELAKANG
>
> 2. Kerajaan telah bersetuju supaya beberapa perbekalan dalam syarat-syarat perkhidmatan Pegawai Angkatan Tetap dan Askar Laskar Angkatan Tetap ATM dipinda sejajar dengan transformasi ATM dan sesuai dengan hala tuju strategik yang ditetapkan. Pindaan-pindaan tersebut meliputi *syarat kelayakan masuk, pangkat permulaan pegawai, pemindahan Senarai Tugas Ikhtisas ke dalam Senarai Tugas Am dan peruntukan kenaikan pangkat berdasarkan tempoh perkhidmatan.* (Emphasis added.)

[53] We also refer to paras 1 and 2 of the 'Surat Pelaksanaan Struktur JGMM', which states that:

> TUJUAN
>
> 1. Surat pelaksanaan ini bertujuan *melaksanakan keputusan Kerajaan* bagi pegawai Senarai Tugas Am (STA) dan Senarai Tugas Khas (STK) dalam skim perkhidmatan Pegawai Angkatan Tetap, Angkatan Tentera Malaysia (ATM) serta anggota lain-lain pangkat dalam skim perkhidmatan Askar Laskar Angkatan Tetap ATM di bawah

Sistem Saraan Malaysia (SSM) mengenai:

1.1 *kesetaraan pangkat* bagi perkhidmatan *Angkatan Tentera Malaysia (ATM) dengan* gred jawatan/gred gaji *Perkhidmatan Awam Am.*

1.2 *penambahbaikan struktur Jadual Gaji Minimum — Maksimum (JGMM) bagi perkhidmatan ATM di bawah Sistem Saraan Malaysia (SSM).*

LATAR BELAKANG

2. Selaras dengan perubahan lapisan gred di bawah Sistem Saraan Baru (SSB) dan SSM bagi Perkhidmatan Awam Am serta perubahan skop fungsi bidang tugas, struktur pangkat dan kelayakan masuk bagi perkhidmatan ATM, *Kerajaan telah bersetuju menetapkan kesetaraan pangkat perkhidmatan ATM dengan gred jawatan/gred gaji Perkhidmatan Awam Am*. Penetapan kesetaraan ini adalah bagi memastikan kedudukan perkhidmatan-perkhidmatan berkaitan sentiasa terpelihara di samping mengekalkan keharmonian antara perkhidmatan. (Emphasis added.)

[54] This is further illustrated in para 5 of the 'Surat Pelaksanaan Struktur JGMM'.

[55] It can be seen that improvements were only made to the salary at the appointment and promotion level, as well as the maximum salary. There was no indication of any salary revision affecting the plaintiffs' current salary scale. Paragraph 6 of the 'Pelaksanaan Struktur JGMM' reads:

Penambahbaikan Struktur JGMM

6. Struktur JGMM sedia ada ditambah baik seperti berikut:

6.1 Peringkat gaji (P) bagi Kumpulan Pelaksana dan, Kumpulan Pengurusan dan Profesional dijadikan satu lapisan JGMM yang baru dengan melibatkan *penggabungan*:

a. *Peringkat gaji PI, P2 dan P3 di gred lantikan.*

b. *Peringkat gaji P1 dan P2 di gred kenaikan pangkat.*

6.2 *gaji maksimum* JGMM bagi semua Kumpulan Perkhidmatan *ditambah baik untuk membolehkan anggota menikmati Pergerakan Gaji Tahunan* (PGT). (Emphasis added.)

[56] In the final analysis, we found that the members of the MAF who were serving as of 1 January 2013 will continue to receive their existing salaries under the current salary scale, unless they meet the requirements for pertukaran pelantikan' and opt to accept the new salary scheme (refer to paras 19–22 of the 'Garis Panduan 2013' and paras 12–14 of the 'Surat Pelaksanaan Struktur JGMM').

[57] In this situation, their starting salary under the new scheme will be readjusted, and they will receive all the new benefits associated with the updated scheme of service.

[58] Therefore, we concur with the defendants that the difference in the pensions received by the respondents who retired before and after 1 January 2013 was not a result of salary revision but rather due to the change in the terms of service for the serving MAF members as of 1 January 2013 onwards, which leads to their starting pay being adjusted according to their respective qualifications.

[59] On another note, we are of the view that the facts in *Aminah bt Ahmad*'s case can be easily distinguished from the facts in the present case. In *Aminah bt Ahmad*'s case, the plaintiffs' pension adjustment, initially calculated based on salary revisions outlined in ss 3 and 6 of the Pensions Adjustment Act 1980, was substituted with a 2% annual increase under ss 3 and 7 of the Pensions Adjustment (Amendment) Act 2013. The Federal Court ruled that this amendment placed the plaintiffs in a less favourable position and violated art 147 of the FC.

[60] There is nothing in the present case to suggest that the formula for pension adjustment in reg 54, read together with reg 51 of the Pensions Regulations 1982, has been repealed or replaced with any less favourable law or regulation. This provision remains applicable and enforceable for all MAF pensioners up to date.

[61] Given that the 'Garis Panduan 2013' and the 'Surat Pelaksanaan Struktur JGMM' are not circulars regarding salary revisions and did not abolish the pension adjustment formula set out in reg 54, read together with reg 51 of the Pensions Regulations 1982, the defendants cannot be said to have breached art 147 of the FC, as they have not placed the plaintiffs in a less favourable position.

[62] We also observed that the learned JC was too fixated on para 11 of the 'Pelaksanaan Struktur JGMM' in concluding that the plaintiffs had been excluded from pension adjustments. However, the learned JC did not consider whether the plaintiffs had successfully demonstrated the existence of any salary revision post 1 January 2013 that would qualify them for a pension adjustment. We believe there was insufficient judicial assessment of the evidence by the learned JC.

[63] While it is undisputed by the defendants that there is a difference in the pensions of the members of the MAF who retired before and after 1 January 2013, the difference in the pensions received is not contingent on whether the

retirement took place before or after 1 January 2013, but instead on the number of months of reckonable service, rank, and last drawn salary, which are used to determine the corresponding last drawn salary based on reg 54 of the Pensions Regulations 1982. Therefore, the last drawn salary of any officer is very much fact-centric.

[64] For the reasons mentioned above, we found that the plaintiffs have failed to prove that the defendants breached arts 5, 8, and 147 of the FC on a balance of probabilities. In this regard, we found merit in the defendants' appeal that the learned JC had erred in holding so.

CONCLUSION

[65] In conclusion, based on all of the above, we have reached a unanimous decision that there are merits in this appeal which warrant our appellate intervention.

[66] The defendants' appeal is therefore allowed, and the High Court's decision is set aside. There is no order as to costs.

Wong Kian Kheong JCA (delivering supporting judgment of the court):

A. INTRODUCTION

[67] In the above appeal ('this appeal'), I have been previously given a draft written judgment of my learned brother, Hashim bin Hamzah JCA ('Hashim Hamzah JCA's judgment').

[68] Hashim Hamzah JCA's judgment has provided the reasons why we have allowed this appeal with no order as to costs ('our decision').

[69] I agree with Hashim Hamzah JCA's judgment and wish to provide an additional ground in support of our decision ('supporting judgment').

[70] A draft copy of this supporting judgment ('draft') had been previously forwarded to Hashim Hamzah and Ismail Ibrahim JJCA. Both my learned brothers had agreed with the draft.

[71] I shall refer to the parties as they were in the High Court.

B. HIGH COURT'S JUDGMENT

[72] In this case, the learned judicial commissioner had decided that, among others:

(1) all the defendants in this case ('defendants') failed to adjust the pension for all pensioners of the Malaysian Armed Forces ('MAF') who had retired before 1 January 2013 ('pensioners (retirement before 1 January 2013)') at a rate and manner in which adjustments had been made by the defendants to MAF pensioners who retired after 1 January 2013 ('pensioners (retirement after 1 January 2013)'); and

(2) compared to the pensioners (retirement after 1 January 2013), the failure of the defendants as stated in the above sub-para (1) ('defendants' failure to adjust pension (pensioners (retirement before 1 January 2013))') had discriminated against the pensioners (retirement before 1 January 2013). Consequently, the defendants' failure to adjust pension (pensioners (retirement before 1 January 2013)) had breached art 8(1) of the Federal Constitution ('the FC') against the pensioners (retirement before 1 January 2013).

[73] This supporting judgment will discuss whether the defendants' failure to adjust pension (pensioners (retirement before 1 January 2013)) constituted a contravention of the equality provision in art 8(1) of the FC.

C. SCOPE OF ART 8(1) OF THE FC

[74] Article 8(1) of the FC provides as follows:

> *Equality*
>
> Article 8(1) *All persons are equal before the law and entitled to the equal protection of the law.* (Emphasis added.)

[75] The nature and application of the equality provision in art 8(1) of the FC has been explained by our Federal Court and summarised in the following judgment of the Court of Appeal in *Mohd Azizul bin Abd Wahab v Tan Sri Dato' Seri Abdul Hamid bin Bador (IG) (Pengerusi Lembaga Tatatertib Polis DiRaja Malaysia, Bukit Aman) & Ors* [2025] 4 MLJ 226, at [34] to [39]:

> [34] *In the Federal Court case of Khong Teng Khen, at p 170, Suffian LP delivered the following 2–1 majority judgment*:
>
> *Article 8 guarantees to all persons equality before the law and its equal protection. Regulations 6, 7, 13, 19, 20 and 21 prescribe rules of procedure and evidence different from those applicable under the Criminal Procedure Code and the [Evidence Act 1950] and to that extent they are discriminatory, but as between all persons charged with security offences within the meaning of reg 2(1) they are not discriminatory and do not therefore offend against art 8. It would have been different if the regulations provide that some persons charged with security offences are to be subject to one set of rules and others charged with similar offences to another set of rules.*

> *The principle underlying art 8 is that a law must operate alike on all persons under like circumstances, not simply that it must operate alike on all persons in any circumstance, nor that it must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons … for the purpose of legislation, Kedar Nath v State of West Bengal AIR 1953 SC 404 406. In my opinion, the law may classify persons into children, juveniles and adults, and provide different criteria for determining their criminal liability or the mode of trying them or punishing them if found guilty; the law may classify persons into women and men, or into wives and husbands, and provide different rights and liabilities attaching to the status of each class; the law may classify offences into different categories and provide that some offences be triable in a magistrate's court, others in a sessions court, and yet others in the High Court; the law may provide that certain offences be triable even in a military court; fiscal law may divide a town into different areas and provide that ratepayers in one area pay a higher or lower rate than those of another area, and in the case of income tax provide that millionaires pay more tax than others; and yet in my judgment in none of these cases can the law be said to violate art 8. All that art 8 guarantees is that a person in one class should be treated the same as another person in the same class, so that a juvenile must be tried like another juvenile, a ratepayer in one area should pay the same rate as paid by another ratepayer in the same area, and a millionaire the same income tax as another millionaire, and so on.* (Emphasis added.)

The above judgment by Suffian LP was concurred by Wan Sulaiman FCJ, at p 176. Ong Hock Sim FJ dissented in Khong Teng Khen, at pp 171 to 176, but did not decide with regard to art 8(1) of the FC.

[35] *Khong Teng Khen had been applied by the Federal Court in Datuk Haji Harun bin Idris v Public Prosecutor* [1977] 2 MLJ 155. *Suffian LP delivered the following judgment in Datuk Haji Harun bin Idris*, at pp 165 to 166:

> 6. In India the first question they ask is, is there classification? If there is and subject to other conditions, they uphold the law. If there is no classification, they strike it down.
>
> *With respect we would agree with the Solicitor-General's submission that the first question we should ask is, is the law discriminatory, and that the answer should then be if the law is not discriminatory, if for instance it obviously applies to everybody, it is good law, but if it is discriminatory, then because the prohibition of unequal treatment is not absolute but is either expressly allowed by the constitution or is allowed by judicial interpretation we have to ask the further question, is it allowed? If it is, the law is good, and if it is not, the law is void.*
>
> 7. *In India discriminatory law is good law if it is based on reasonable' or permissible' classification, using the words used in the passage reproduced above from the judgment in Shri Ram Krishna Dalmia AIR 1958 SC 538, provided that:*
>
> (i) *the classification is founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group; and*
>
> (ii) *the differentia has a rational relation to the objects ought to be achieved by the law in question. The classification may be founded on different bases such as geographical, or according to objects or occupations and the like. What is necessary is that there must*

be a nexus between the basis of classification and the object of the law in question.

The Solicitor-General submits that if the Indian doctrine of classification is to be accepted by our courts, which he argues has not been done, it may be accepted subject to the modification that the courts should not take it upon itself to consider whether the classification is reasonable or not, a task which should be left to the legislature. In our opinion the doctrine of classification should be accepted by our courts, subject to what we said in para 6 above. We adhere to what was said in Public Prosecutor v Khong Teng Khen …

…

As regards the narrower question whether or not the courts should leave it to the legislature alone to go into the reasonableness of the classification, we think that the court should not, that in other words the court should consider the reasonableness of the classification. (Emphasis added.)

The test laid down in Datuk Haji Harun bin Idris is known as the 'reasonable classification test'. Premised on the reasonable classification test, if an impugned matter provides for different classes and different treatment for different classes, the impugned matter is not discriminatory and does not therefore infringe art 8(1) of the FC if the following three conditions are fulfilled cumulatively:

(1) *the impugned matter provides for the same treatment for all persons in the same class ('first condition (reasonable classification test)');*

(2) *there is an intelligible differentia' (reasonable, rational or logical basis) for the provision of different classes and different treatment of different classes by the impugned matter, namely, there is a reasonable classification basis ('second condition (reasonable classification test)'); and*

(3) *there exists a nexus between the reasonable classification basis and the object of the impugned matter ('third condition (reasonable classification test)').*

[36] *It is to be noted that when Khong Teng Khen and Datuk Haji Harun bin Idris were decided, our Parliament had abolished appeals to the Privy Council on constitutional and criminal matters. In other words, the Federal Court which decided Khong Teng Khen and Datuk Haji Harun bin Idris was our apex court then.*

[37] *The reasonable classification test has been applied by our highest court in the following cases (in chronological order):*

(1) *in the Supreme Court case of Malaysian Bar & Anor v Government of Malaysia* [1987] 2 MLJ 165*, both the 2–1 majority judgment (delivered by Mohd. Azmi SCJ, at p 170) and dissenting judgment (by Salleh Abas LP, at pp 167 and 168), had applied the reasonable classification test;*

(2) *the following judgments in the Federal Court case of Abdul Ghani bin Ali @ Ahmad & Ors v Public Prosecutor* [2001] 3 MLJ 561:

(a) *the decision of Abdul Malek Ahmad FCJ (as he then was), at pp 579 to 581; and*

(b) *Ahmad Fairuz FCJ's (as he then was) judgment, at pp 594 to 596.*

(3) *the judgment of the Federal Court delivered by Augustine Paul JCA (as he then was) in Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd* [2004] 2 MLJ 257*, at [35] to [40] and [47] to [50].*

[38] *In the Federal Court case of Alma Nudo Atenza v Public Prosecutor and another appeal* [2019] 4 MLJ 1*, Richard Malanjum CJ had added the condition of 'proportionality' (proportionality condition) in deciding whether an impugned matter has complied with* art 8(1) of the FC*. According to Alma Nudo Atenza, at [142] to [145] and [150]:*

> [142] *Next to consider is whether the incursion into the presumption of innocence under art 5(1) satisfies the requirement of proportionality housed under art 8(1).*
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> [143] *The first stage in the proportionality assessment is to establish whether there is a sufficiently important objective to justify the infringement of the right, in this case the right to presumption of innocence.* The legislative objective in inserting s 37A is to overcome the problem of the prosecution failing to prove the element of trafficking as defined in the DDA. Drug trafficking has been a major problem in the country. It needs to be curbed. One way is to secure convictions of drug traffickers which can be considered a sufficiently important objective and one which is substantial and pressing.
>
> [144] *The second stage of the inquiry is to consider whether the means designed by Parliament has a rational nexus with the objective it is intended to meet.* The effect of s 37A, as elaborated above, is to shift the burden of proof to an accused on the main elements of possession, knowledge, and trafficking, provided that the prosecution establishes first the relevant basic facts. It is at least arguable that the resulting ease of securing convictions is rationally connected to the aim of curbing the vice of drug trafficking. Bearing in mind that the validity of individual presumptions are not in issue in the present appeals, it is not necessary for us to analyse the rational connection between custody and control on one hand and possession and knowledge on another, or the connection between possession and trafficking (see *R v Oakes* at para 78).
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> [145] *The third stage of the inquiry requires an assessment of proportionality. It must be emphasised any restriction of fundamental rights does not only require a legitimate objective, but must be proportionate to the importance of the right at stake.*
>
> ...
>
> [150] *Based on the factors above the essential ingredients of the offence, the imposition of a legal burden, the standard of proof required in rebuttal, and the cumulative effect of the two presumptions we consider that s 37A constitutes a most substantial departure from the general rule, which cannot be justified and disproportionate to the legislative objective it serves. It is far from clear that the objective cannot be achieved through other means less damaging to the accused's fundamental right under art 5. In light of the seriousness of the offence and the punishment it entails, we find that the unacceptably severe incursion into the right of the accused under art 5(1) is disproportionate to the aim of curbing crime, hence fails to satisfy the requirement of proportionality housed under art 8(1).*(Emphasis added.)

A [39] *The proportionality condition had been adopted by Tengku Maimun CJ in the Federal Court in Ketheeswaran a/l Kanagaratnam & Anor v Public Prosecutor* [2024] 1 MLJ 851*, at [130] to [133], as follows*:

> [130] *The jurisprudence of art 8(1) is beyond settled. In order to achieve equality in the truest sense of art 8, decided cases have held that discrimination is allowed except in certain cases*. In relation to art 8(2), discrimination only on the grounds stated in that article is prohibited against citizens unless expressly authorised by the FC. However, if an argument is made in respect of art 8(1), then the following must be shown.
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> [131] *Firstly, there must be an intelligible differentia between the categories of persons (or classes of persons) that are classified within a certain group against persons (or classes of persons) who can be clearly classified outside of that group. In other words, the discrimination must be intelligible and clear not arbitrary or wanton. The first element of art 8(1) looks for a clear distinction between who is discriminated. This assessment ensures that the discrimination is not done arbitrarily.*
>
> [132] *The second element of art 8(1) which is usually the one at issue in most cases, looks at the basis of discrimination. Here, it must be established that the differentiation in the first element was enacted in furtherance of a legitimate legislative aim and that there is a reasonable nexus between the discrimination and that legislative aim. If there is no objective and justifiable reason for the discrimination, then in such a circumstance, the measure will have violated art 8(1).*
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> [133] *In relation to the second element, more recent cases decided in the past few decades such as Alma Nudo, also emphasis the importance of proportionality in the assessment of the measure. In other words, even if the legislative measure which is discriminatory was pursued for a legitimate aim, the measure may still be violative of art 8(1) if the extent of the measure taken is disproportionate to the legitimate legislative aim it seeks to achieve.* (Emphasis added.)

[76] Premised on the above Federal Court cases, whether an executive policy, action or decision ('executive policy/action/decision') has breached art 8(1) of the FC depends on a determination of the following issues:

(1) whether the executive policy/action/decision had provided for the same treatment for all persons in a particular class;

(2) if the answer to the question in the above sub-para (1) is in the affirmative, the executive policy/action/decision has not discriminated against any person and there is therefore no contravention of the equality provision in art 8(1) of the FC by the executive policy/action/decision;

(3) if the answer to the issue in the above sub-para (1) is 'no' and the executive policy/action/decision had discriminated against a particular person or group of persons (X) with regard to all other persons (Y) in the same class as X, the following questions arise:

(a) is there is an 'intelligible differentia' (reasonable, rational or logical

basis) for the provision of different treatment of X and Y by the executive policy/action/decision? If the answer to this question is in the affirmative, there is a reasonable classification of X and Y by the executive policy/action/decision ('reasonable classification');

(b) whether there exists a nexus between the reasonable classification and the object of the executive policy/action/decision ('object (executive policy/action/decision)'); and

(c) is the reasonable classification proportionate to the object (executive policy/action/decision)?

(4) if the answers to *all the three issues* in the above sub-paras (3)(a) to (c) are *yes',* the executive policy/action/decision did not violate the equality provision in art 8(1) of the FC; and

(5) if any one or more of the three questions in the above sub-paras (3)(a) to (c) is/are answered in the negative, the executive policy/action/decision had breached the equality provision in art 8(1) of the FC.

D. DID THE DEFENDANTS' FAILURE TO ADJUST PENSION (PENSIONERS (RETIREMENT BEFORE 1 JANUARY 2013)) BREACH ART 8(1) OF THE FC?

[77] Firstly, as explained in Hashim Hamzah JCA's judgment, there was no defendants' failure to adjust pension (pensioners (retirement before 1 January 2013)). On this ground alone, this appeal should be allowed.

[78] Secondly, even if the defendants' failure to adjust pension (pensioners (retirement before 1 January 2013)) exists, I am of the respectful view that the defendants' failure to adjust pension (pensioners (retirement before 1 January 2013)) has not breached the equality provision in art 8(1) of the FC. My reasons are as follows:

(1) there is a reasonable classification by the defendants to explain the different treatment of:

(a) the pensioners (retirement before 1 January 2013); and

(b) the pensioners (retirement after 1 January 2013).

The 'intelligible differentia' between the above two categories of MAF pensioners is due to the application of 'Garis Panduan Pelaksanaan Pindaan Syarat-Syarat Perkhidmatan Angkatan Tentera Malaysia' dated 17 January 2013 (GP) and 'Surat Pelaksanaan Kesetaraan Pangkat dan Penambahbaikan Jadual Gaji Minimum Maksimum (JGMM) Bagi Perkhidmatan Angkatan Tentera Malaysia Di Bawah Sistem Saraan Malaysia' dated 14 March 2013 ('JGMM').

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It is clear from Hashim Hamzah JCA's judgment that GP and JGMM do not constitute a salary revision but were instead an amendment to the terms of service of *serving members* of the MAF (which can only apply to the pensioners (retirement after 1 January 2013) and not to the pensioners (retirement before
B 1 January 2013)). Hence, the existence of reasonable classification with regard to the pensioners (retirement before 1 January 2013) and pensioners (retirement after 1 January 2013);

C (2) the object of GP and JGMM was to 'equalise' (*menyetarakan*) and enhance (*menambah baik*) the salary scales of serving MAF members with members of the Public Services ('object (GP/JGMM)'). The object (GP/JGMM) was not to discriminate the pensioners (retirement before 1 January 2013) in favour of pensioners (retirement after 1 January 2013). In my view, there exists a nexus between the reasonable classification and the object (GP/JGMM); and
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(3) the reasonable classification is certainly not disproportionate to the object (GP/JGMM).

E *Appeal allowed.*

Reported by Nabilah Syahida Abdullah Salleh

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